not kept upon these two specific parcels of land for the 5 year continuous period involved.

10. That the City has put nothing on these two particular parcels of land, which has remained there for the continuous 5 year period, visible to a passerby, which would show that the City of El Paso owned these lands.

11. That the City has put nothing on these particular two parcels of land which would show that the City remained in visible possession of these two parcels of land for a five year period, between January 26, 1956 and August 31, 1961.

12. That the grant of 16.46 acres for U. S. Highway Interstate 10, which was built through the approximate center of N/2 of Survey 240, was made within the 5 year period before the filing of this suit on August 31, 1961.

13. That the gravel permit granted for 20 acres on February 2, 1961, to the County of El Paso, on N/2 of Survey 240, was granted within the 5 year period before the filing of this suit on August 31, 1961.

14. That the 22 foot road granted to the County of El Paso February 2, 1961, from the northwest corner of the N/2 of Survey 240 to the gravel permit, including .56 of an acre, was granted within the 5 year period before the filing of this suit on August 31, 1961.

15. That this road has not been built by the County.

16. That the City never gave actual notice to Simmons that it was claiming title or possession of

the two parcels of land until after Plaintiff's suit was filed on August 31, 1961.

17. That the City exercised no hostility toward Greenberry Simmons, the record owner, before the filing of this suit on August 31, 1961.

18. That the City had never heard of Greenberry Simmons, the record owner, before this suit was filed.

19. That the City thought these lands were owned by the State of Texas when it received the purported patents on January 26, 1956 and up until this suit was filed.

20. That the City exercised no hostility toward any one with reference to these involved lands, for a continuous full 5 years period between January 26, 1956 and August 31, 1961.

21. That the City drilled no water wells on these two parcels of land between January 26, 1956 and August 31, 1961.

22. That the City, since it obtained its purported patents on January 26, 1956, has spent very little, if any, money on these two particular parcels of land, excluding the rest of the 14,000 acres and exclusive of attorney fees.

23. That the printed record in this suit was printed by the printers for the Clerk of the Court of Appeals for the Fifth Circuit and returned by him, with the original Record to this Court, includes all of the records filed in this Court before it was appealed.

24. That the Appellant's Printed Brief, which was also returned by the Clerk of the Court of Appeals

with the printed record in this case, was the same Printed Brief for the Plaintiff, which was printed for the District Court here before it was appealed, except there was added, (a) Printed Record page numbers for the Court's reference, (b) Rider Sheet, (c) Brief of the Argument, pp. 16b-16i, (d) Specification of Errors, p. 16a.

25. That the Court of Appeals for the Fifth Circuit, in this same suit, between the same parties, in this trespass to try title suit, has held that Simmons is the record owner of these two parcels of land.

26. That at the time the City obtained its purported sale from the authorization of the State, through its Legislative Act of 1955, the State had a contract with equitable recorded owner Simmons, to deliver the naked legal title to him upon the payment of the balance of the interest and principle.

27. That the Court of Appeals for the Fifth Circuit in this suit has held that this purported sale to the City of these same two parcels of land, which had already been sold is illegal and void.

28. That this illegal and void sale is the basis of the City's two purported patents which are the only "deed or deeds duly registered" it has to fulfill this requirement of Article 5509.

29. That when the State Legislature passed the Act of 1955 and made the authorization of this purported sale, to the City, of these two parcels of land, that the purported sale was made without any due compensation whatsoever to Simmons.

30. That when the State Legislature authorized this purported sale to the City no prior actual notice was given to Simmons.

31. That the reason this purported sale was illegal and void was that it was an unconstitutional sale.

32. That by claiming adverse possession under the 3 year Statute, Art. 5507 and the 5 year Statute, Art. 5509, the City is also bound by the definition of "adverse possession" as set out in Art. 5515: "'Adverse Possession' is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another."

33. That in Texas, where claimant has failed in its adverse possession claim against a record owner of land, in the same suit between the same parties, the record owner cannot be guilty of laches.

34. That the City, as claimant, must show that the record owner had actual notice of its adverse possession claim, in order for the record owner to be guilty of laches.

35. That Plaintiff's Exhibit No. 38, a section of the County Engineer's map of El Paso County, with added explanations and added insets, is the area northwest of El Paso, including Canutillo and Vinton, Texas, known locally as the "Upper Valley."

36. That the inset area at the bottom of Plaintiff's Exhibit No. 38 covering the Canutillo connecting road overpass over U. S. Highway Interstate 10, is approx-

imately the area covered by the aerial photographs, Simmons' Exhibits Nos. 39, 39A.

37. That the inset area at the top of Plaintiff's Exhibit No. 38 covering the Vinton connecting road overpass over U. S. Highway Interstate 10, is approximately the area covered by the aerial photograph, Simmons' Exhibit No. 40.

38. That the rectangular inset tracings within the Canutillo overpass aerial photographs, Simmons' Exhibits Nos. 39, 39A, is approximately the area covered by N/2 Nellie D. Mundy Survey 240.

39. That the rectangular inset tracing within the Vinton overpass aerial photograph, Simmons' Exhibit No. 40, is approximately the area covered by Laura E. Mundy Survey 235.

40. That if the State cannot deliver these two parcels of land to the City, under its purported sale, the City may get back its paid purchase price from the State under Art. 5411.

Signed: HAROLD S. LONG,
HAROLD S. LONG,
El Paso National Bank Bldg.,
El Paso, Texas,

Signed: GREENBERRY SIMMONS,
GREENBERRY SIMMONS,
Kentucky Home Life Bldg.,
Louisville, Kentucky 40202,

Attorneys for the Plaintiff.

March 31, 1964.

PROOF OF SERVICE.

I, Greenberry Simmons, one of the attorneys for Greenberry Simmons, Plaintiff herein, hereby certify that on the 31 day of March, 1964, I served copies of the foregoing Request for Admission, on the Defendant, City of El Paso, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, certified to the respective attorneys of record as follows:

To Thornton Hardie, Esq.,
To Morris A. Galatzan, Esq.,
To William J. Mounce, Esq.,
Attorneys for Defendant, City of El Paso,
El Paso Natural Gas Company Bldg.,
El Paso, Texas.

Signed: GREENBERRY SIMMONS,
Attorney for Greenberry Simmons,
Kentucky Home Life Bldg.,
Louisville, Kentucky 40202.

ACCRUED ACTION SINCE C A 5 DECISION.

The City Has Made No Application or Motion for Stay in the Lower Courts, Under Supreme Court Rule 18 (1) or Any Other Rule.

After the mandate in this case, September 26, 1963 went to the District Court to determine City's purported defenses of adverse possession and laches, the new District Judge exercised his discretion and sent notices, February 7, 1964, including pre-trial set for April 20, 1964, at 2:00 p.m.

Excerpts from these notices are as follows:

"IN THE UNITED STATES DISTRICT COURT
For the Western District of Texas
El Paso Division

Homer Thornberry
United States District Judge

P. O. Box 62
El Paso, Texas 79940
February 7, 1964

NOTICE

TO ALL LAWYERS HAVING CASES ON THE DOCKET OF THE UNITED STATES DISTRICT COURT AT EL PASO, TEXAS:"

"* * * pre-trials must be held in *every civil case*, whether it is for preliminary relief or otherwise, * * *."

"Copies of all papers * * * must be furnished to the Court no later than ten (10) days before April 13, 1964."

"Pre-trial Conference Schedule"
"Monday, April 20, 1964"
"2:00 p.m., * * *"
"2334 Simmons vs. City of El Paso"

Under the above circumstances and to comply with the same, Simmons on April 1, 1964, filed his printed "Plaintiff's Request for Admissions under Rule 36", dated March 31, 1964, covering the City's purported defenses of adverse possession and laches.

The City answered on April 8, 1964. The answer is filed herewith. The City failed to answer under oath and also failed to specifically answer the first 15 admissions requested, pp. 41-42, as required by Rule 36 F.R. Civ. P. If deemed to be answered in the affirmative, it would seem the City has not taken visible adverse possession for the required five year continuous period.

The City of El Paso's Objection to Request for Admissions Was Filed April 8, 1964.

Which is as follows:

IN THE UNITED STATES DISTRICT COURT
For the Western District of Texas
El Paso Division

Civil No. 2334

GREENBERRY SIMMONS, - - - - - - - *Plaintiff,*

vs.

CITY OF EL PASO, - - - - - - - - *Defendant.*

OBJECTION TO REQUEST FOR ADMISSIONS.

Comes now the Defendant, CITY OF EL PASO, and objects to the Request for Admissions heretofore served upon it by the Plaintiff, GREENBERRY SIMMONS, and in support thereof would respectfully show the following:

I.

The appeal of the above case is now pending before the United States Supreme Court. Until the Supreme Court has acted upon the appeal, any request for admissions is premature.

II.

The request that certain documents are genuine should not be allowed because Defendant has not been furnished a copy of documents A, B, C, D, E and F. Further, the Defendant would show that it has no way of knowing whether the documents under Items G, H, I and J of Plaintiff's Request for Admissions are genuine. The information necessary to enable the Defendant to either admit or deny the genuineness of such documents is not readily available; consequently, the Defendant should not be required to respond to such requests.

III.

Items 16, 17, 20, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 40 of Plaintiff's Request for Admissions call for conclusions of law rather than an admission of fact; therefore, the Defendant should not be required to respond thereto.

IV.

The facts requested under Items 23, 24, 35, 36, 37, 38 and 39 of Plaintiff's Request for Admissions are not within the knowledge of the Defendant, CITY OF EL PASO. The information necessary to enable the CITY OF EL PASO to either admit or deny the correctness of the statements is not readily available. Further, said requests call for conjecture or guesswork on the part of the CITY OF EL PASO; consequently, the Defendant should not be required to respond to such requests.

WHEREFORE, premises considered, the Defendant, CITY OF EL PASO, prays that said Request for Admissions be suspended pending the decision of the United States Supreme Court and if for any reason the decision of the United States Court of Appeals for the Fifth Circuit is upheld by the United States Supreme Court, that an order be entered that Defendant need not answer the request for genuineness of documents nor reply to Items 16, 17, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 of the Plaintiff's Request for Admissions.

Respectfully submitted,

HARDIE, GRAMBLING, SIMS & GALATZAN,
By William J. Mounce,
Attorneys for the Defendant,
City of El Paso.

I, William J. Mounce, certify that I have this 8th day of April, 1964, mailed a copy of the foregoing to Harold Long, Attorney of record for the Plaintiff, Greenberry Simmons.

Signed: WILLIAM J. MOUNCE

Office-Supreme Court, U.S.
FILED
FEB 8 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964

No. 38

CITY OF EL PASO, - - - - Appellant,

versus

GREENBERRY SIMMONS, - - Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

GREENBERRY SIMMONS,
Individually as Petitioner,
Respondent, (Appellee).

GREENBERRY SIMMONS,
Kentucky Home Life Bldg.,
Louisville, Kentucky.
Counsel for Respondent (Appellee)

February 6, 1965.

IN THE

Supreme Court of the United States

October Term, 1964

No. 38

CITY OF EL PASO, *Appellant,*

v.

GREENBERRY SIMMONS, *Appellee.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

Petitioner, Greenberry Simmons, Respondent (Appellee), prays that this Court, under its Rule 58, grants rehearing of its majority decision of January 18, 1965, reversing the Court of Appeals decision. Petitioner also, under First Amendment of the Constitution, "petitions the government for the redress of grievances."

The necessary cause of this petition is that the Court's majority opinion directs the major part of its attention to new matters, never before ever brought up in this suit and that it

goes outside of the Record to do so, which makes it imperative, in fairness to all, for the Court to reconsider their position in the light of the first reply to these new matters.

REASONS FOR GRANTING REHEARING, PETITION AND FOR CORRECTION OF MISTAKE OF FACT

1. The majority opinion of the Court permits the taking permanently of the private property rights of Simmons for public use without any just compensation, whatsoever, in violation of the rights given Simmons by the Constitution of the United States, Fifth Amendment, Fourteenth Amendment and Article 1, Section 10.

2. The Court's majority opinion based its decision on judicial notice which conflicts with the "Transcript of Record" in this suit.

3. The Court's majority opinion has based its "reasonable and appropriate" judgment on its Judicial Notice of the General Land Office Reports by former General Land Commissioner for the State of Texas, Bascom Giles,[1] who was a convicted felon and spent several years in prison for land frauds in this very office and was the same Giles who refused to reinstate this land, instead of basing its opinion of "reasonable and appropriate" judgment on the Transcript of Record filed in this suit, composing of certified copies of the records of the General Land Office for the State of Texas and County Clerk's office, admitted by the City to be genuine.

---

[1] Bascom Giles, General Land Commissioner, State of Texas, 16 years, Jan. 1939-Jan. 1955. All such Reports cited during this period, where the Court's majority opinion goes outside of the Record and cites Giles' Reports 9 times, pages 13, 14 (two times cited), 15 (four times cited), 16, 18. At the same time failed to cite a single page number of this Record, made up of certified copies of official records and documents, and admitted as genuine by the Appellant (Petitioner).

If the members of the Court's majority choose to go outside of this Record by Judicial Notice or otherwise and rely on Bascom Giles' Reports and permit anyone to take Simmons' property rights permanently without paying for them — to say the least, these majority members of the Court, may have been illadvised.

The substantial cause of the title conflicts and confusion which this Court is trying to "reasonably and appropriately" solve, is the States' own fault, because its Legislatures have passed all these conflicting Acts, since the date of these two Contracts in 1910, on the recommendation of Bascom Giles and others like him looking after their personal interests, [which is resulting in the moral fiber of this great land of ours fast going down the drain] and not the failure of these vendees who could not pay their interest until later but were permitted to pay up back interest at any time before the State resold their lands.

4. The Court may desire to correct a substantial mistake of fact stated in its opinion. In speaking of what the settler's Glenn and Kilpatrick and their vendees, including Simmons, did to get the lands in this suit, it said:

> "All this for a nominal down payment". Court's majority opinion, page 17, second line from bottom.

Whereas this Transcript of Record clearly shows that the "OBLIGATION"[2] itself says settlers Glenn and Kilpatrick or their vendees, including Simmons, had to build their homes with their own money and reside upon these homesites for

---

[2] "* * * such lands shall be subject to sale, but to actual settlers only * * *. And if he or his vendor has already resided upon his home section for three years, * * *, the additional lands purchased may be patented *at any time*" (Emphasis added). Appendix D For Appellee Simmons, pp. 55-56, all of Art. 4218f, ch. 129, Act of May 19, 1897; R. 67, 43, "OBLIGATION" as heading in the middle of the page.

three years which Glenn and Kilpatrick did. This was the hardest part of their "OBLIGATION" to perform and this record shows that they did it. R. 46-48, 48-51, 69-72.

This Record shows that settlers Glenn and Kilpatrick and their vendees held possession of these lands for over thirty (30) years and paid interest on them and to say that "all this for a nominal down payment" is clearly a substantial mistake which goes to the very heart of this Record and of course will be corrected.

CONCLUSION

For the reasons set forth above and for the correction of the stated mistake of fact, it is respectfully urged that a rehearing be granted and further consideration be given to both Court's majority and minority opinions and that the Court of Appeal's decision be affirmed instead of reversed.

Greenberry Simmons further prays under the rights given him by the First Amendment to the Constitution that his petition to his "government for redress of grievances" be granted.

On Jan. 18, 1965 before the Court's majority decision (opinion)[3] was announced Greenberry Simmons owned these 620.65 acres of land. If this decision is allowed to stand without alteration Simmons, with the highest respect for the Supreme Court, has stated clearly and precisely that this decision has taken permanently his private property rights for public use without any just compensation, whatsoever, in violation of several sections of the Constitution.

---

[3] Both majority and minority opinions, 33 U. S. Law Week 4126, Jan. 19, 1965, Vol. 33 No. 27.

As an American citizen and for a lifetime of free service he has rendered the profession of law and hopes for the welfare of mankind—it is earnestly and respectfully suggested that each of these eight Justices individually and personally direct his attention to the consideration of this petition and prayer, as this is the first reply to completely new matter raised by the Court outside of this Record in this suit.

Respectfully submitted,

GREENBERRY SIMMONS,
Individually as Petitioner,
Respondent, (Appellee).

GREENBERRY SIMMONS,
Kentucky Home Life Building
Louisville, Kentucky 40202
Counsel for Respondent (Appellee.)

February 6, 1965.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court and of the First Amendment to the Constitution.

GREENBERRY SIMMONS,
Counsel for Respondent (Appellee.)

PROOF OF SERVICE

I, Greenberry Simmons, one of the Attorneys for Greenberry Simmons, Respondent (Appellee) herein, and a member of the Bar of the Supreme Court of the United States, hereby Certify that on the 6th day of February, 1965, I served copies of the foregoing Petition for Rehearing for the Respondent (Appellee) Simmons on the Appellant (Petitioner), City of El Paso, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to the respective Attorney of record as follows:

To William J. Mounce, Esq.
Attorney for Appellant (Petitioner)
City of El Paso
El Paso Natural Gas Company Bldg.
El Paso, Texas

Greenberry Simmons
Attorney for Greenberry Simmons,
Kentucky Home Life Building,
Louisville, Kentucky, 40202